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Division Bench (Civil)

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR (MP)

Criminal Appeal No. 150 94

APPELLANT : Bhuwan Lal Patel Son of Bahursingh,
Aged 35 years, resident of Deori
P.S. Bagbahra Tah. Mahasamund, Distt. Raipur (MP)

VERSUS.

RESPONDENT : THE STATE OF M.P.

CRIMINAL APPEAL U/S 374(2) OF THE CODE OF
CRIMINAL PROCEDURE

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक 8 A 750/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH:</u> HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ CRIMINAL APPEAL NO.750/1994 Appellant : Bhuwan Lal Patel Vs. Respondent : State of Madhya Pradesh Smt. Indira Tripathi, learned counsel for the appellant. Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Akhil Mishra, P.L. for the respondent/State. <u>ORAL JUDGMENT</u> (30.01.2006) <u>L.C. Bhadoo, J</u> By this appeal under Section 374 (2) of the Cr.P.C. the appellant has questioned the legality of the judgment of conviction and order of sentence dated 27.04.94 passed by learned Additional Sessions Judge, Mahasamund in S.T. No. 376/92 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of his wife Kunti Bai convicted him under Section 302 of the IPC and sentenced to undergo imprisonment for life. 2. Case of the prosecution in brief, is that in the intervening night of 7th & 8th of August 1992 at about 11.00 p.m. when Tularam was sleeping in his house along with his family members his younger brother's wife came to	

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	his house and informed that some quarrel was taking place in the house of Bhuwan, on hearing this he went to the house of Bhuwan and saw that wife of Bhuwan was lying on the cot and blood was oozing out of her head. He sent his brother Jeevan Lal to call the doctor but the doctor did not come, therefore he called elderly people of the village. P.W.2 Daresh and P.W.3 Phool Singh and one Chamru came there and they saw that Kunti Bai was already dead. On the next morning at about 9.30 a.m. report (P-1) was lodged by Tularam in police station Bagbehara. The Station House Officer left for the scene of occurrence and prepared panchnama of the dead body (P-2). He also prepared sight plan (P-4) of the place of occurrence. Thereafter the dead body was sent for post mortem examination to Primary Health Centre, Bagbehara where Dr. B.P. Agrawal (P.W.5) conducted the post mortem on the body of Kunti Bai and prepared post mortem report (P-5). While in police custody the accused gave memorandum (P-9) and based on that he got recovered carpenter's axe under P-10. Blood stained clothes of the accused were taken into possession under P-11. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Mahasamund who in turn committed the case to the Court of Sessions Judge Raipur from where Additional Sessions Judge, Mahasamund received the case on transfer for trial.	
3.	Prosecution in order to establish the charge against the accused/appellant has examined as many as fifteen witnesses. The statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he	

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	denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime in question.	
4.	Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecution and counsel for the accused/appellant convicted and sentenced the appellant as mentioned in paragraph one of this judgment.	
5.	We have heard Smt. Indira Tripathi, learned counsel for the appellant and Shri U.N.S.Deo and Shri Akhil Mishra for the State.	
6.	Homicidal nature of death of Kunti Bai is not in dispute.	
7.	As far as involvement of accused/appellant in committing the murder of his wife Kunti Bai is concerned, learned counsel for the appellant argued that the conviction rests on the evidence of P.W.2 Daresh and P.W.3 Phool Singh before whom the accused/appellant is said to have made extra judicial confession. She argued that the evidence of P.W.2 Daresh and P.W.3 Phool Singh is full of omissions and contradictions and the same does not inspire confidence, therefore conviction is bad in law. She further argued that as the villagers were of the view that deceased was witch craft, therefore villagers might have committed her murder.	
8.	On the other hand Shri U.N.S.Deo and Shri Akhil Mishra for the State supported the judgment of the trial Court.	

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9.	It is true that there is no eye witness in this case and the whole case rests on circumstantial evidence i.e. extra judicial confession made by the accused/appellant before P.W.2 Daresh and P.W.3 Phool Singh and that the accused was found sitting near the body of Kunti Bai and the blood stained clothes of the accused were taken into possession by the Investigating Officer. Even the carpenter's axe was taken into possession at the instance of the accused.	
10.	In order to appreciate the arguments of learned counsel for the parties we have perused the evidence of P.W.2 Daresh who has stated in his evidence that on the fateful night elder brother of Bhuwan Lal namely Jeevan Lal came and informed him that some incident has taken place and Bhuwan Lal had murdered his wife, therefore he went to the house of Bhuwan Lal along with one Dhanna Ji. Dead body was lying near the door in the room and son and daughter-in-law of Bhuwan Lal were sitting there. Accused Bhuwan Lal was also sitting near the dead body. On enquiry from Bhuwan Lal he informed him that he has murdered his wife, on which he said that "you have done injustice and why do you take law in your hands". Bhuwan Lal said that even though he had committed the murder of his wife but he was unable to understand as to why he has done so. At that time panch, sarpanch and other villagers came there and on their enquiry in front of all the persons the accused made confession that he has committed murder of his wife. There was injury on the head of wife of Bhuwan Lal. P.W.3 Phool Singh has also stated that when he went to the house of the accused on enquiry he informed that he has committed murder of his wife. Both these witnesses are independent witnesses. In	

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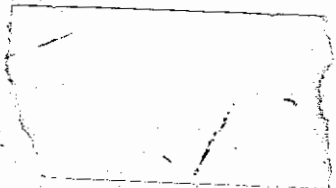
आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	order to place reliance on the extra judicial confession the Court has to ascertain that extra judicial confession made by the accused was voluntary, true and prompt. There is nothing on record to show that extra judicial confession was made under any threat, promise or coercion. These are the independent witnesses of the village who came to the scene of occurrence on the request of elder brother of the accused namely Jeevan lal and there is no reason for these witnesses to implicate accused in a false case. Their evidence is corroborated by the evidence of P.W.1 Tularam even though he has turned hostile but the fact remains that he has stated that on the fateful night when he was taking rest in his house, one girl came to his house and informed that quarrel was taking place in the house of Kunti Bai and when he went there he saw that wife of Bhuwan Lal was lying. Bhuwan Lal was also present and he was weeping. Even the blood stained clothes of the accused were taken into possession by the Investigating Officer under P-11 and even the carpenter's axe was taken into possession by the Investigating Officer and this evidence stands corroborated by the medical evidence also. P.W.5 Dr. V.P.Agrawal has stated in his evidence that there was injury on the right parietal region and the parietal and occipital bones were fractured. Moreover there was a house murder and accused was seen by the witnesses sitting by the side of body of his wife and he has not explained as to how death of his wife took place.	
11.	In view of the above evidence we are of the considered opinion that finding of the trial Court convicting the accused for causing the death of Kunti Bai is based on legal evidence and there is no illegality and infirmity	

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12.	in the impugned judgment, therefore we do not find any ground to interfere with the judgment of the trial Court. Learned counsel for the accused/appellant placing reliance on the judgment of Madhya Pradesh High Court in the matter of <u>Hetram and Others Vs. State of M.P.</u> reported in <u>2002(4) MPHT 75</u> argued that prosecution has not been able to establish the motive and the accused attacked the deceased with the back side of carpenter's axe. Had he intended to cause death of Kunti Bai he must have attacked Kunti Bai from the sharp side of the axe. As per the settled law if there is no clear evidence regarding intention of the accused, the same can be gathered from the fact i.e. on which part of the body the injury was inflicted, facts leading to the offence, the weapon used in the offence which are necessary factors to be considered. If we examine this aspect of the matter, the accused attacked deceased with the back side of the axe and that too, on the vital part of the body as a result of which occipital and parietal bones were fractured. Therefore looking to the nature of injuries, place of injury and weapon of offence, it is established that the accused attacked the deceased with intention to cause death of Kunti Bai and on facts the judgment cited by the counsel for the appellant is of no help to the accused. Accordingly the offence against the accused for committing the murder of Kunti Bai is established and on this count also the same does not suffer from any illegality or infirmity. 	

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13	In the result we do not find any substance in this appeal and the appeal is liable to be dismissed. It is accordingly dismissed. Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge